EX PARTE OR LATE FILED

HELEIN & ASSOCIATES, P. C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE
SUITE 700
MCLEAN, VA 22102

(703) 714-1300 (TELEPHONE)
(703) 714-1330 (FACSIMILE)

WRITER'S DIRECT DIAL NUMBER:

(703) 714-1311

JUL 24 1996

July 24, 1996

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VIA HAND DELIVERY

Mr. William Caton
Secretary
Room 222
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: *Ex Parte Presentation Disclosure*; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **CC Docket No. 96-98.**

Dear Mr. Caton:

Transmitted herewith, on behalf of America's Carriers Telecommunication Association ("ACTA"), by its attorneys, are an original and one copy of an *ex parte* presentation made today by ACTA in the above-referenced docket. This letter and its enclosure are being filed in accordance with the Commission's Rules governing *ex parte* communications.

Please date stamp the extra copy of this letter and return it with the courier. All inquiries regarding this matter should be addressed to the undersigned.

Respectfully submitted,

Robert M. McDowell

Robert M. McDowell
Counsel for ACTA

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ACTA

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Federal Communications Commission
Office of Secretary

July 24, 1996

VIA HAND DELIVERY AND FACSIMILE

The Honorable Reed E. Hundt
Chairman

The Honorable James H. Quello
Commissioner

The Honorable Rachelle B. Chong
Commissioner

The Honorable Susan Ness
Commissioner

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98.

Dear Mr. Chairman and Commissioners:

On behalf of America's Carriers Telecommunication Association ("ACTA"), by its attorneys, this letter is being filed in accordance with § 1.1200 *et seq.* of the Commission's Rules governing *ex parte* communications.

It has come to ACTA's attention that the Commission may be seriously considering implementing rules pursuant to § 251 of the Telecommunications Act of 1996 ("the Act") that will call for the pricing of unbundled network elements not with a long run incremental cost model, but by adding access charges to the cost of such elements. The alleged rationale behind this proposal is to "soften the blow" to revenues to be incurred by incumbent local exchange carriers ("LECs") due to added competition in the local market. If the Commission is about to embark on this misguided approach, ACTA could not disagree more vehemently for the following reasons:

950 South Winter Park Drive, Suite 325 Casselberry, Florida 32707
Phone: 407-332-9382 or 800-881-ACTA(2282) Fax: 407-332-9780 E-Mail: actanet1@intellistar.net

8180 Greensboro Drive, Suite 700 McLean, Virginia 22102
Phone: 703-714-1332 Fax: 703-714-1330 E-Mail: actanet1@intellistar.net

- With the Act, Congress mandated that incumbent LECs offer unbundled access of network elements at "rates, terms and conditions that are just, reasonable and nondiscriminatory". *See* §§ 251(c)(2)-(3). The plain language of the Act does not empower the Commission to calculate alleged (and untrue) adverse economic effects into the cost formulation of unbundled network elements. If Congress had wished for such a cost structure, it would have included it in the language of the Act.

- By adopting a scheme that does not rely on true economic costs, but, instead includes the recovery of embedded costs through the "marking up" of the pricing of network elements via access charges for each element, the Commission will be etching into stone a myopic and antiquated standard whose only purpose is to benefit the entrenched monopolies and, therefore, extinguish the hopes of true competition in the local loop.

- The adoption of a forward-looking long-run incremental cost standard for assessing the true cost of unbundled network elements provides the monopolies with the recovery of competitive costs, including a reasonable profit. common and joint costs. A properly deployed TSLRIC (Total Service Long Run Incremental Cost) pricing plan requires that common costs be separated on a service-by-service basis. Unlike the embedded cost standard which the Commission may be on the verge of adopting, the TSLRIC standard is widely accepted as allowing the carrier to competitively price its services against new entrants, thus assuring that entry will be economically rational. (In fact, the TSLRIC model is advocated by RBOC subsidiaries abroad when they seek to compete against foreign monopolies. Therefore, their arguments against TSLRIC when *they* face competition domestically, must be deemed disingenuous at best.)

- An embedded base costing standard may result in artificially higher prices based on "book" entries that have little or nothing to do with the incumbent LEC's economic costs of providing the service. Therefore, the use of embedded costs will deter efficient entry because the resulting prices have little, if anything, to do with the current or future costs of production. Rather, they unjustly enrich the incumbent LEC which has already recovered the cost of its embedded base over the years through access charges already received.

For the reasons above, and those in comments previously filed, ACTA strongly urges the Commission to adopt rules that clearly call for pricing at the TSLRIC standard, and not allow competition to be nipped in the bud through adding needless and excessive access charges to the cost of unbundled elements.

Respectfully submitted,

Guy Sederski
President
ACTA

cc: Office of the Secretary
Ms. Regina Kenney
Richard Metzger, Esq.
Mr. John Nakahara
Ms. Pete Belvin
Mr. Daniel Gonzalez
Mr. James Casserly
ACTA Board